



UTAH DEPARTMENT OF COMMERCE

Division of Consumer Protection

Complaint Disclosures in Statute

Presented to the Business and Labor Committee of the Utah
Legislature

Division of Consumer Protection Mission Statement

Strengthening trust in Utah's commercial activities by protecting consumers through education and impartial enforcement.



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The Purpose of Consumer Protection Education

- Educate businesses regarding applicable statutes
- Increase visibility of Division tools available to the public (Verify a Registration, Legal Action Search, Buyer Beware List, etc)
- Boost public awareness of the Division as a resource for consumers who need assistance (file a complaint)
- Educate the public about how to be a W.I.S.E. consumer



Increasing Consumer Awareness

- “Legal Action Search,” “Buyer Beware List,” and “Consumer Referral Guide on dcp.utah.gov”
- Social media outreach (Facebook, Twitter, Instagram)
- Outreach events
- News releases & local media requests



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FTC and Utah Division of Consumer Protection Suit Leads to Largest Consumer Settlement in Utah History

May 22, 2023

Real estate investment programs

SALT LAKE CITY, UT – The Federal Trade Commission (FTC) and Division of Consumer Protection (DCP) announced a court-ordered settlement with Response Marketing Group, Inc. (RMG), a real estate investment program, making opportunities. The suit brought by DCP and the FTC alleged that RMG operated deceptive real estate investment programs. Additionally, two real estate celebrities, Scott Yancey and Doreen

Response Marketing drew consumers to free events nationwide through social media to share their investing techniques. At these events, Response Marketing representatives would pitch the company and its investment opportunities, often representing that it would provide consumers with access to special training programs. Additionally, the company would pitch additional training programs that cost tens of thousands of dollars. The FTC and DCP alleged that the company used deceptive practices to attract consumers to these events.



Get Gephardt: How do you know if your donation really gets to those who need it?

Feb 3, 2023, 9:21 AM | Updated Feb 6, 2023, 9:40 AM



3 Consumer Protection Statutes Address Public Disclosure of Complaints

- Utah Consumer Sales Practices Act (CSPA), Utah Code § 13-11
- Business Opportunity Disclosure Act (BODA), Utah Code § 13-15
- Telephone Fraud Prevention Act (TFPA), Utah Code § 13-26



Utah Consumer Sales Practices Act

Utah Code § 13 - 11

13-11-7 Duties of enforcing authority - Confidentiality of identity of persons investigated

"In carrying out his duties, the enforcing authority may not publicly disclose the identity of a person investigated unless his identity has become a matter of public record in an enforcement proceeding or he has consented to public disclosure."



Business Opportunity Disclosure Act

Utah Code § 13 - 15

13-15-401 Consumer complaints.

"...a complaint that... alleges a loss to the consumer or business... of \$3,500 or more or is one of at least 50 complaints filed with the division against the same person... is a public record and may not be classified as a private, controlled, or protected record under [GRAMA]"



Telephone Fraud Prevention Act

Utah Code § 13 - 26

13-26-12 Consumer complaints are public.

"...a complaint that... alleges a loss to the person... of \$3,500 or more; or is one of at least 50 complaints filed with the division against the same person... is a public record; and may not be classified as a private, controlled, or protected record under [GRAMA]"



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The Competing Provisions in Practice

- The CSPA, which prohibits deceptive acts and practices in consumer transactions, is core to the Division's work.
- Of 1,532 complaints closed by the Division in 2022, 1,340 included a CSPA component. (~90%),
- Since most complaints to the Division contain CSPA allegations, most are considered "not public" for GRAMA purposes (even if the complaint includes allegations related to another Division-enforced statute such as business opportunities, telephone solicitations, charitable solicitations, solar disclosures, etc.).
See Utah Code §§ 13-11-7(2); 63G-2-201(3)(b).



Protecting Investigations

- DCP is generally not able to disclose or comment on consumer complaints before legal action is taken.
- Maintaining confidentiality is helpful to the Division and bolsters impartial enforcement:
 - Maintaining confidentiality protects businesses from broad publication of unsubstantiated or non-meritorious accusations.
 - Confidentiality helps the Division conduct its work efficiently, carefully, and free from outside influence.
- While confidentiality is important and helpful, publicly disclosing complaints in specific circumstances may further the Division's mission and purpose.



Disclosing Consumer Complaints

- BODA and the TFPA both include provisions that classify consumer complaints as public records, with redaction requirements for specific information.
- The definition of “consumer complaint” in those provisions sets a relatively high bar:
 - An allegation of \$3,500 lost in a single complaint; or
 - The complaint is 1 of at least 50 complaints against the same person during the preceding 4 years.
- These provisions can help inform the public, but apply only to BODA and TFPA complaints. Some high-harm scenarios do not fit these provisions, and cannot be disclosed until the Division takes legal action.



Aligning Disclosure Requirements Across Statutes

- Improving and extending the disclosure provisions present in BODA and the TFPA to all DCP statutes would help the Division educate the public.
- With the Legislature's assistance, the Division can balance the interests of:
 - Educating the public
 - Maintaining investigational integrity
 - Protecting reputations from non-meritorious complaints, mistakes, and misunderstandings.



Recommendations

- Remove the discrete disclosure provisions from §§ 13-11-7(2), 13-15-401, and 13-26-12.
- Combine the disclosure provisions in a new § 13-2-11. Apply the new provision to all statutes the Division enforces.
- General rule: no disclosure of the identity of the subject of any complaint submitted to the Division until legal/administrative action.
- Maintain the “non-public” GRAMA designation.
- Reclassify complaints as public when the Division receives 10 complaints against a person in the preceding calendar year. (Down from 50 in the preceding 4 years.)
 - The complaints should allege the same or similar conduct.
 - Allow the Division to consider complaints against separate entities operated by common ownership.
- Remove provisions regarding “non-meritorious” complaints. Present provisions are impracticable.
- Remove amount of alleged loss as criteria for reclassification.

